

Tom Horne
Superintendent

N·E·W·S

ARIZONA DEPARTMENT OF EDUCATION

Contact: Amy Rezzonico, Press Secretary (602) 542-5072

FOR IMMEDIATE RELEASE:

Thursday, May 26, 2004

Superintendent of Public Instruction Tom Horne Resists Pressure to Sanction Alleged Misuse of Taxpayer Funds

PHOENIX (Thursday, May 26, 2004) - State Superintendent of Public Instruction Tom Horne has accused Buena Vista Children Services of Cottonwood, Arizona of trying to apply pressure to sanction alleged misuse of public funds or suffer criticism in the media.

Buena Vista Children's Services has received funds from an NCLB (No Child Left Behind) 21st Century Community Learning Center Grant, a grant based on the economic level of the students and the school's need for improvement.

Superintendent Horne is working under the advisement of the U.S. Department of Education during this investigation and a partial hold was placed on program money until Buena Vista provides an audited financial disclosure as required by the grant. Horne has authorized funds for salaries to complete the spring program. Additionally, monies are being made available for the planned summer program, but only after review of legitimate invoices. Horne added that the issue has impact beyond the current situation since misuse of federal funds for education in our state could affect the ability of other districts to obtain future funding.

On Friday, May 14, 2004, Buena Vista Children's Services, through its attorney, demanded that a resolution be in place by the end of the day, while admitting that the required audit, due last March 31, would not be completed until July 31 or August 31. The investigation into the records of Buena Vista Children's Services continues in the auditing and grants management departments of the Arizona Department of Education.

Horne stated: "I am not criticizing public figures who were requested to show support for their constituents. That is part of their job. But if Buena Vista thinks it can pressure me into neglecting my responsibility to exercise vigilant stewardship of taxpayer funds, it should think again."

Alleged abuses include failure to provide accounting for an expenditure of \$1.1 million over a thirteen month period for an after school academic program servicing only 226 eligible students, as reported in Buena Vista's attendance records dated March 2004. This is an approximate cost of \$4,900 per student, compared to the typical cost for programs of this type of around \$300 per student.

(MORE)

In addition to inadequate student records some of the other alleged abuses include:

1. Complete procurement records have not been provided as requested. Construction costs are not allowed in the grant and preliminary data indicates that construction costs exceeding \$62,373 may have been charged to the grant.
2. Employment records provided indicate that certain employees are working significantly more hours a day than the approved four-hour daily after school program. Some employees are paid up to 13 1/2 hours daily, which is not consistent with funds intended for after school academic support of students in four grant approved schools. This indicates funds intended for academic programs are being used for childcare, which was never authorized. Superintendent Horne assured the legislature that if all day kindergarten were approved; it would provide academic readiness, not just daycare. While not a kindergarten program, enforcing academic requirements for this program is not only important as a matter of policy, but is also a requirement of the grant.
3. The payment of 20% from grant funds for the Buena Vista Executive Director's salary was approved. Records provided indicate that 68% of the director's salary is being billed to the grant.
4. Buena Vista's attendance records for Cottonwood Middle School of March 2004 identify 9 students on the roster to receive support services. Capital outlay costs for the off-site location to service this middle school were reported at \$119,780, which included 66 student computers at the cost of \$99,000. These expenditures were not authorized.

A copy of two relevant letters by the Attorney General is attached.

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TERRY GODDARD
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CIVIL DIVISION
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May 27, 2004

VIA FACSIMILE AND U.S. MAIL

Mr. Franklin J. Hoover
MANGUM, WALL, STOOPS & WARDEN, P.L.L.C.
100 North Elden Street
Post Office Box 10
Flagstaff, AZ 86002

Re: Buena Vista Children's Services

Dear Mr. Hoover:

As part of the terms of the award of a 21st Century Community Learning Center (21st CCLC) Grant by the Arizona Department of Education (ADE), Buena Vista Children's Services (Buena Vista) executed the GENERAL STATEMENT OF ASSURANCE that contained the following relevant declarations:

Consistent with 34 C.F.R. Sections 76-85, the SUBGRANTEE assures, if awarded a grant, sub-grant, or contract:

1. That the SUBGRANTEE will accept funds in accordance with applicable Federal and State statutes, regulations, program plans, and applications, and administer the programs in compliance with all provisions of such statutes, regulations, applications, policies and amendments thereto. . . .
4. That the SUBGRANTEE will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organization" utilizing generally accepted accounting principles (GAAP). That the SUBGRANTEE will

furthermore utilize competitive bidding practices in compliance with applicable procurement regulations.

5. That the SUBGRANTEE will make reports to the STATE AGENCY and to the DEPARTMENT as may reasonably be necessary to enable the STATE AGENCY and DEPARTMENT to perform their duties.

6. That the SUBGRANTEE will maintain records, including the records required under Section 437 of the General Education Provisions Act ("GEPA"), 20 U.S.C. § 1221, and provide access to those records as the STATE AGENCY or DEPARTMENT and the Comptroller General or any of their authorized representatives in the conduct of audits authorized by Federal Law or State Statute. This cooperation includes access without unreasonable restrictions to its records and personnel for the purpose of obtaining relevant information. . . .

21. That funds will be used to supplement and not supplant State and local funds expended for educational purposes and, to the extent practicable, increase the fiscal effort that would, in the absence of such funds, be made by the SUBGRANTEE for educational purposes. . . .

24. That it shall maintain records for 5 years following completion of the activities for which the SUBGRANTEE uses the federal or state funding and which show:

- A. The amount of funds under the subgrant or grant.
- B. How the SUBGRANTEE uses the funds.
- C. The total cost of the project.
- D. The share of that total cost provided from other sources. . . .

26. That in the event of a sustained audit exception, and upon demand of the STATE AGENCY, the SUBGRANTEE shall immediately reimburse the STATE AGENCY for that portion of the audit exception attributable under the audit to the SUBGRANTEE, but shall also immediately reimburse the STATE AGENCY expenses in defending the audit exception, including and not limited to travel and attorney's fees, in an amount proportional to the amount of the audit exception attributable to the SUBGRANTEE. The SUBGRANTEE agrees to hold the STATE AGENCY harmless for any audit exception arising from the SUBGRANTEE's failure to comply with applicable regulations. . . .

28. That the SUBGRANTEE is in compliance with State and Federal laws and regulations.

For some time now, ADE has expressed its concerns over Buena Vista's compliance with the terms of the Grant. As of this date, ADE has not received a copy of Buena Vista's 2003 Single Audit as required by the U.S. Office of Management and

Budget (OMB) Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions." In fact, it is our understanding that this audit will not be completed until July 31, 2004, at the very earliest, even though the Single Audit was due March 31, 2004.

ADE has grave misgivings regarding the amount of money spent for staff and other expenditures in relation to the number of students eligible to be served by the 21st CCLC Grant. Employment records provided by Buena Vista indicate that certain employees are working significantly more hours per day than the approved number as set forth in the budget for the Grant. Only 20% of the Executive Director's salary was approved for payment under the Grant. Buena Vista charged 21st CCLC with 68% of the salary.

Buena Vista has drawn down \$1.1 million on its grant, despite the fact that it has been servicing only 226 eligible students, as reported in Buena Vista's attendance records dated March 2004. This is an approximate cost of \$4,900 per student, compared to the typical cost of approximately \$300 per student for programs of this type.

Buena Vista has not been able to clearly account for expenditures under the Grant, including unauthorized capital outlay, and ADE is questioning various purchases for construction that were not approved in the budget for Grant expenditures. Complete procurement records have not been provided as requested. Buena Vista has not submitted any financial documents that clearly identify other funding sources for its projects.

In addition, site visits by ADE personnel showed major discrepancies between the number of students reportedly being served at the sites and the Class Summary Report. Buena Vista has admitted that it served children that were ineligible under the Grant.

ADE has an obligation to monitor the 21st CCLC Grant awards. Based on the Department's many concerns regarding compliance with Grant requirements, Phyllis Schwartz informed Leslie Owen, Executive Director of Buena Vista, on May 3, 2004, that ADE would release \$26,000.00 in funds to cover expenses until the end of May. Buena Vista was also advised at that time that it should not expect to have 21st CCLC grant funds available for the summer program.

In my correspondence to you dated May 4, 2004, I requested, on behalf of ADE, that Buena Vista provide ADE with detailed records regarding its expenditures and clear attendance records. Despite ADE's many requests for information, no information has been provided to ADE that meets those criteria. In addition, the information that has been provided of late only raises ADE's discomfort level with the way the Grant has been managed and the funds have been spent.

Pursuant to U.S.C.A. 20 § 1232(c)(b)(2) and 34 C.F.R. § 80.43(a), ADE is suspending 21st CCLC Grant payments to Buena Vista. ADE will provide Buena Vista with reasonable notice and an opportunity for a hearing.

If the principals of the four schools affected by the fund suspension wish to sponsor a summer academic program pursuant to the 21st CCLC Grant, ADE would be anxious to facilitate an emergency sub-grant. ADE has requested approval from the U.S. Department of Education for such an endeavor.

ADE expects that Buena Vista will continue to follow the terms of the Grant and provide ADE with all required documents, including the Single Audit that was due March 31, 2004.

Please feel free to call me if you have any questions.

Very truly yours,

Jill K. Osborne
Assistant Attorney General
Education and Health Section

JKO:nlf

c: Tom Horne, Superintendent of Public Instruction
Phyllis Schwartz, Associate Superintendent
Cheryl Lebo, Deputy Associate Superintendent



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Mr. Franklin J. Hoover
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100 North Elden Street
Post Office Box 10
Flagstaff, AZ 86002

Dear Mr. Hoover:

The Arizona Department of Education (ADE) has determined that it is in the best interest of the community for Buena Vista Children's Services (Buena Vista) to go forward with the summer school program through June 30, 2004. Because of ADE's many concerns regarding compliance with the 21st Century Community Learning Center Grant and in accordance with its statutory enforcement obligations and discretion, ADE will permit Buena Vista to continue the program under the following requirements:

1. Future payments will be on a "draw-down" basis for basic operating costs and approved grant line item expenses specified in Buena Vista's budget, provided that appropriate "back-up" data is submitted. Buena Vista will submit all invoices to ADE for approval in advance of "draw-down." In order to assist Buena Vista with this process, the enclosed forms should be used to track Buena Vista expenditures; and
2. Additional, more detailed financial reports will be required.

In recent correspondence from Leslie Owen, Executive Director, and in our discussions, I understand that your client has agreed that a "draw-down" schedule of payments would be appropriate.

In light of ADE's concerns as set forth in previous correspondence to Buena Vista, however, ADE intends to suspend payments to Buena Vista at the end of the summer school program on June 30, 2004. ADE has afforded Buena Vista prior opportunities to provide ADE with reasons why the Department should not suspend payments. If Buena Vista has any additional information to forward

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to ADE to "show cause" why this action should not be taken, ADE would certainly review such materials. It would be very helpful to all concerned if the Single Audit that was due on March 31, 2004, would be ready for examination before June 30, 2004. Buena Vista will be provided with the notice for a hearing before an impartial hearing officer within sixty days of the proposed suspension, as required by statute.

Very truly yours,

Jill K. Osborne
Assistant Attorney General
Education and Health Section

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c: Tom Horne, Superintendent of Public Instruction
Phyllis Schwartz, Associate Superintendent
Cheryl Lebo, Deputy Associate Superintendent